

July 9, 2008

EA-08-177

Carl Benson
Manager of Geotechnical & Environmental
McKinney and Company
100 South Railroad Avenue
Ashland, VA 23005

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 03033013/2008001)

Dear Mr. Benson:

This refers to the inspection conducted on May 12, 2008, at your Ashland, Virginia facility. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and your license conditions. The findings of the inspection were discussed with your staff at the completion of the inspection on May 12, 2008. Subsequently, on June 13, 2008, the subject inspection report was issued to you describing the three apparent violations, one of which was being considered for escalated enforcement.

In the letter transmitting the inspection report, we also provided you the opportunity to address the apparent violations identified in the report by either attending a predecisional enforcement conference (PEC) or by providing a written response before we made our final enforcement decision. During a telephone conversation between yourself and Ms. Judith Joustra of this office on June 23, 2008, you declined the opportunity to either attend a PEC or to provide additional written information regarding the apparent violations.

Based on the information developed during the inspection, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The most significant violation involved the failure to use two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal at your facility during periods when the gauges were not under control and constant surveillance. This condition was contrary to NRC requirements set forth in 10 CFR 30.34(i). Specifically, on May 12, 2008, five portable gauges were stored in a locked room in your facility; however, a second independent physical control to secure the portable gauges was not present at the time of the inspection, nor were licensee personnel present in the immediate area to provide control and constant surveillance of the gauges.

This violation is of concern to the NRC because the potential existed for an unauthorized individual to take possession of the gauges which could have resulted in a member of the public being exposed to radiation if the gauges, containing licensed material, were not handled

properly. Therefore, in accordance with the Enforcement Policy, the NRC has classified this violation at Severity Level (SL) III.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,250 is considered for a SL III violation. Since your facility has not been the subject of escalated enforcement action within the last two years or two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were considered prompt and comprehensive. These corrective actions included: (1) immediately locking a second door at the facility to further restrict access to the storage area and to provide the second independent physical control; (2) promptly upgrading the hinges of this second locked door to further improve the physical controls that were in place; and, (3) promptly upgrading the latch of the storage area door, as well as adding a second locking device to that door.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this SL III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

The other two violations identified during the inspection are cited in the enclosed Notice and have been categorized at SL IV.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in this letter, and in NRC Inspection Report No. 03033013/2008001. Therefore, you are not required to respond to this letter. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201, if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, please follow the instructions in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. If you choose to respond, to the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the

C. Benson

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disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov>.

Sincerely,

/RA/

Samuel J. Collins
Regional Administrator

Docket No. 03033013
License No. 45-25229-01

Enclosure: Notice of Violation

cc: Commonwealth of Virginia

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Sincerely,

/RA/

Samuel J. Collins
Regional Administrator

Docket No. 03033013
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cc: Commonwealth of Virginia

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NAME	*DHolody		**S Woods		*SCollins			
DATE	06/27/08		07/07/08		07/09/08			

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*See previous concurrence

** Via email from S Woods on 7/7/08

NOTICE OF VIOLATION

McKinney and Company
Ashland, Virginia

Docket No. 03033013
License No. 45-25229-01
EA-08-177

During an NRC inspection conducted at your Ashland, Virginia facility on May 12, 2008, three violations of NRC requirements were identified and were discussed during an exit meeting on May 12, 2008. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.34(i) requires that each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, on May 12, 2008, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure five portable gauges from unauthorized removal, whenever the portable gauges were not under the control and constant surveillance of the licensee. Specifically, five portable gauges were found unattended inside an unlocked building with only one physical control (a locked storage area door) that formed a tangible barrier to secure the portable gauges.

This is a Severity Level III violation (Supplement IV).

- B. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

49 CFR 172.702 requires that each HAZMAT employer shall ensure that each HAZMAT employee is trained and tested, and that no HAZMAT employee performs any function subject to the requirements of 49 CFR Parts 171 - 177 unless trained in accordance with Subpart H or 49 CER Part 172. The terms HAZMAT employer and HAZMAT employee are defined in 49 CFR 171.8.

49 CFR 172.704(c)(2) requires that each HAZMAT employee shall receive training required by this subpart at least once every three years.

Contrary to the above, as of May 12, 2008, the licensee, a HAZMAT employer, did not ensure that four HAZMAT employees, who performed functions subject to the requirements of 49 CFR Parts 171 - 177, were trained as required. Specifically, one employee had not received HAZMAT training since April 1989, one had not received HAZMAT training since November 1991, one had not received HAZMAT training since April 1995, and one had not received HAZMAT training since April 1998.

This is a Severity Level IV violation (Supplement IV).

- C. Condition 18 of License No. 45-25229-01 requires that each portable gauge shall have a lock or outer locked container designed to prevent unauthorized or accidental removal of

the sealed source from its shielded position. The gauge or its container must be locked when in transport, storage, or when not under the direct surveillance of an authorized user.

Contrary to the above, on May 12, 2008, a gauge located in storage was not locked and its outer container was not locked.

This is a Severity Level IV violation (Supplement IV).

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to be taken to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in the letter transmitting this Notice and in NRC Inspection Report No. 03033013/2008001. Therefore, a response to this Notice is not required. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-08-177," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at www.nrc.gov/reading-rm/adams.html. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 9th day of July 2008